



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the ALJ should be affirmed, although for other reasons. Claimant, an 8-year employee of respondent, worked in its garage door group, handling 40-pound sheets of product. On October 8, 2004, claimant was asked by Timothy Bell, respondent's operations manager, to gather up her personal items and come to the office. At that time, during a meeting with Mr. Bell and Ron Cooper, the personnel manager, claimant was terminated. At this point, the description of the incidents vary between the testifying parties. All parties agreed claimant left respondent's facility after the termination and approximately 30 minutes later, after going to the bank and cashing a check, claimant returned to respondent's facility.

When claimant was first advised of the termination, she was asked to sign a termination paper, which she refused. Upon further consideration, claimant returned to respondent's property for the sole purpose of signing that termination paper. Respondent contends the reason for claimant's termination dealt with certain alleged threats from claimant's husband that he was going to bring a gun to respondent's facility to harm a person or persons unknown. This threat, which allegedly was made both to Mr. Bell and Mr. Cooper, ultimately came to the attention of respondent owner's, Ted, who then conferred with Mr. Cooper and determined that claimant's employment should be terminated. Mr. Bell acknowledged that the termination was not his decision nor was it his desire, as he considered claimant to be a good employee.

After claimant returned to respondent's facility to sign the termination document, an altercation allegedly occurred between claimant, and Mr. Bell and Mr. Cooper. Claimant testified that she signed the termination paper and then attempted to obtain a copy. When she tried to walk out with the document, she was assaulted by Mr. Bell, who (claimant alleged) placed her in a head lock, causing her injury to her right arm and neck. Claimant testified that she was screaming and yelling, and demanding they let her go. Claimant then ran out the door, hysterical and in tears. Claimant testified that respondent's secretary, Wanda Fink, was standing outside the facility, smoking a cigarette, and observed her emotional state as she was leaving. Claimant asked Ms. Fink to go back inside to get her car keys, which claimant thought she dropped inside. Claimant then found her keys on the ground and left the facility. Claimant proceeded from respondent's facility directly to the office of B. Barrett, M.D., claimant's family physician. Dr. Barrett's office note of October 8, 2004, indicates claimant was emotionally distraught because she had just been fired. There is no indication that claimant suffered an injury to her neck, although there was comment in Dr. Barrett's October 8 note that there was no bruising, redness or swelling on her extremities "where she was restrained." Dr. Barrett's note also indicates

that claimant was not complaining of any injury from this episode, but that “she is just about to emotionally ‘lose it.’”<sup>3</sup>

Claimant then proceeded to the home of Danny Thayer, the chief of police.<sup>4</sup> It is not explained in this record why claimant proceeded to the chief of police’s home, rather than the police station. Claimant, after leaving the home of the chief of police, proceeded to her house, where, when her husband returned home at approximately 4:00 p.m., he found her with a bruised and swelling neck and acting very distraught. Claimant’s husband then took claimant to the hospital emergency room. The emergency room notes of October 8, 2004,<sup>5</sup> indicate that claimant had pain in both sides of her neck and her shoulder blades, with redness to the neck noted. Claimant’s information to the emergency room indicated that she had been put into a head lock.

Respondent’s secretary, Ms. Fink, testified that she remembered claimant leaving the facility on the date in question. However, when she saw claimant, claimant was not crying or acting emotional and did not appear to be suffering the effects of any injuries. Rather than running, claimant was walking and did not appear to be rushed. In her opinion, claimant appeared normal and calm.

Mr. Bell, respondent’s operations manager, testified regarding the incident in question. He stated that claimant, on returning to the plant, had signed the termination form, but that she had written additional information on the form, which Mr. Cooper stated to her was not the reason she was being terminated. Claimant then took the form and attempted to leave. Mr. Bell testified that he took ahold of claimant’s wrist and requested she return the form, and may have placed his hand on her shoulder. However, when claimant advised him that he was restraining her, he immediately let her go. Mr. Bell denied emphatically that claimant was ever placed in a head lock or that there was any screaming, crying or yelling as claimant left the office. He further denied that claimant was forced almost to her knees on the floor as a result of the incident. Claimant acknowledged that at the time she filled out the form, she also had written that there was “no reason” for the termination, and then she signed it and placed it in her back pocket.<sup>6</sup>

Claimant’s history is significant in that she had been treated for right arm complaints since 2003, mid back and neck injuries in September of 2004 after moving a mattress (at which time she received chiropractic treatment), and had a lengthy history of

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<sup>3</sup> P.H. Trans., Cl. Ex. 2.

<sup>4</sup> P.H. Trans. at 14.

<sup>5</sup> P.H. Trans., Cl. Ex. 3.

<sup>6</sup> P.H. Trans. at 12.

depression. Claimant, on cross-examination, admitted that she had suffered neck and low back pain after being thrown from a horse in February of 2000 and that she suffered or experienced multiple depression episodes since her daughter's birth 19 years before. In May of 2000, she suffered right shoulder and arm injuries when she fell off a fence. In September of 2000, she suffered injuries to her right leg and pelvis while moving furniture. And she was diagnosed with possible cubital tunnel syndrome in February of 2003. Claimant testified her most recent neck and back pain, attributed to the moving of the mattress, was approximately one week before her termination, although the medical notes associated with that injury are dated September 10, 2004, not quite a month before the termination incident. Claimant's doctor, Dr. Barrett, did note in his September 30, 2004 report, that claimant was experiencing back pain and had psychological issues associated with conflicts with her father-in-law.

In workers compensation litigation, it is the claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.<sup>7</sup> The Board must first consider whether the fact that claimant was terminated, left the facility and returned to sign the termination paper would be sufficient to remove claimant from respondent's employment so as to deny her benefits for this incident.

In order for claimant to collect workers compensation benefits, she must suffer accidental injury arising out of and in the course of her employment.<sup>8</sup>

The two phrases "arising out of" and "in the course of," as used in K.S.A. 44-501, et seq.,

. . . have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable. The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment."<sup>9</sup>

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<sup>7</sup> K.S.A. 44-501 and K.S.A. 2004 Supp. 44-508(g).

<sup>8</sup> K.S.A. 44-501.

<sup>9</sup> *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984); citing *Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.2d 497 (1973).

Whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to that particular case.<sup>10</sup>

The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment.<sup>11</sup>

An accidental injury is compensable even where the accident serves only to aggravate a preexisting condition.<sup>12</sup>

The evidence clearly shows claimant had multiple preexisting problems associated with both physical and psychological distress. The question arises as to whether the incident described by claimant was sufficient to cause respondent to be responsible for any injury she may have suffered. Multiple cases across the United States have dealt with the issue of traumas associated with or occurring shortly after terminations. In *Cook*,<sup>13</sup> an Alabama employee was fired for violating the employer's dress policy and sustained injuries in an altercation with another employee just after the termination. When the claimant filed a tort action, the claim was barred by the exclusivity of the workers compensation act in Alabama. The appellate court in Alabama noted that a person's employment includes a reasonable time, space and opportunity before and after the actual employment.<sup>14</sup> In this instance, while claimant did leave, the purpose of her return to respondent's facility was to sign the termination paper, which had been presented to her

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<sup>10</sup> *Messenger v. Sage Drilling Co.*, 9 Kan. App. 2d 435, 680 P.2d 556, rev. denied 235 Kan. 1042 (1984).

<sup>11</sup> *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

<sup>12</sup> *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>13</sup> *Cook v. AFC Enters., Inc.*, 826 So.2d 174 (Ala.Civ.App. 2002).

<sup>14</sup> *Id.*; see also *Johnson v. Safreed*, 224 Ark. 397, 273 S.W.2d 545 (1954). Former employee, assaulted by a fellow employee within a moment or two after termination, was awarded compensation. *Peterson v. Moran*, 111 Cal. App. 2d 766, 245 P.2d 540 (1952). Employee not allowed to maintain tort action against employer for an assault by a foreman who fired him when the attack occurred on the premises a few minutes after the termination. *Grant v. John Hancock Mut. Life Ins. Co.*, 183 F.Supp.2d 344 (D. Mass. 2002). A discharged employee, who alleged he sustained injuries in a fight with the company's security guard while clearing out his office, was not allowed to sue the former employer in tort as his exclusive remedy was in the workers compensation scheme. The court, in *Grant*, ruled that the workers compensation act covered not only the actual employment, but a reasonable interval after the end of the employment. The course and scope of Grant's employment had not ended for purposes of workers compensation immunity.

prior to her first departure. The Board finds that claimant's purpose for being on respondent's premises arose out of and in the course of her employment because there is a reasonable interval after the end of employment during which time workers compensation coverage continues. Any injuries which may have occurred as a result of that incident would be covered under the Kansas Workers Compensation Act.

It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections of the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.<sup>15</sup>

The Board must next consider whether the incident occurred as described by claimant or as described by Mr. Bell. As claimant is alleging injuries to her neck, right arm and upper back (between her shoulders), the actual incident will have a dramatic effect on what, if any, injuries claimant may have suffered. Claimant's description of the incident is substantially different than that presented by Mr. Bell, the operations manager. Additionally, the testimony of Ms. Fink, respondent's secretary, directly conflicts with claimant's description of her appearance and attitude after leaving the respondent's facility. Ms. Fink denied claimant was emotionally distraught, denied she was crying or running, and described claimant's appearance as normal. And finally, the Board notes that claimant initially went to her personal physician, Dr. Barrett, immediately after leaving respondent's plant. Dr. Barrett does note that claimant was emotionally distraught due to the termination, but saw no signs of bruising or redness on her extremities and claimant actually admitted to Dr. Barrett that she had not suffered any injury from this episode, but that she was about to emotionally "lose it." It was not until claimant proceeded to the chief of police's house and then to her home and finally back to the emergency room that signs of redness appeared on her neck.

The Board cannot explain in this situation the delay in the appearance of the redness on claimant's neck. Had claimant undergone the physical trauma as she described, it is difficult to understand how her personal physician, Dr. Barrett, would have been unable to see signs of any physical trauma after the incident. It is also difficult to understand how claimant would fail to allege any injury from this episode to Dr. Barrett after she testified that while in the head lock, she felt her neck pull and how she left the plant screaming, crying and running.

In this instance, the Board finds the more credible evidence to support a finding that the incident associated with claimant's termination was no where near as physically traumatic as that described by claimant. The Board finds that claimant has failed to prove that she suffered the alleged injuries to her neck, shoulders and arm as a result of

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<sup>15</sup> K.S.A. 44-501(g).

the incident at work. The Board, therefore, affirms the preliminary hearing Order of Administrative Law Judge Thomas Klein, which denied claimant benefits in this matter, although on other grounds.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Thomas Klein dated January 6, 2006, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April, 2006.

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BOARD MEMBER

c: Jim Lawing, Attorney for Claimant  
Randall W. Schroer, Attorney for Respondent and its Insurance Carrier  
Thomas Klein, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director